



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Thomas Edward Homan

MAY 25 2018

Orange City, FL 32763

RE: MUR 7307

Dear Mr. Homan:

The Federal Election Commission reviewed the allegations in your complaint received on January 5, 2018. On May 23, 2018, based upon the information provided in the complaint, and information provided by the respondents, the Commission decided to exercise its prosecutorial discretion to dismiss the allegations as to Frederick "Fred" Costello and Fred Costello for Congress and Steve Tacinelli in his official capacity as treasurer, and close its file in this matter. Accordingly, the Commission closed its file in this matter on May 23, 2018. A copy of the Factual and Legal Analysis, which more fully explains the basis for the Commission's decision, is enclosed.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009).

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. See 52 U.S.C. § 30109(a)(8).

Sincerely,

Lisa J. Stevenson
Acting General Counsel

BY: 
Jeff S. Jordan
Assistant General Counsel

Enclosure
Factual and Legal Analysis

1804444528

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Frederick "Fred" Costello, MUR 7307
Fred Costello for Congress and Steve Tacinelli in his official capacity as
treasurer

This matter was generated by a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended ("the Act") and Commission regulations by Frederick "Fred" Costello and Fred Costello for Congress and Steve Tacinelli in his official capacity as treasurer ("the Committee"). It was scored as a low-rated matter under the Enforcement Priority System, by which the Commission uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue.

The Complaint alleges that Costello has been campaigning since at least August 2017 and did not file a Statement of Candidacy within 15 days of becoming a candidate.¹ The Amended Complaint further alleges that Respondents distributed emails inviting recipients to a January 6, 2018, kick-off event and solicited donations, which failed to contain the required disclaimers for public communications by a federal campaign.²

Respondents state that they did not raise or spend more than \$5,000 until December 20, 2017,³ and thus, Costello timely filed his Statement of Candidacy on December 27, 2017.⁴

¹ Compl. at 5-6 (Jan. 5, 2018). Complainant alleges that Costello became a candidate as early as August 9, 2017, when two newspaper articles were published in which Costello discusses a possible candidacy. *Id.* at 1-2. In addition, Complainant alleges that Costello designed and printed business cards in support of his candidacy, and that he distributed those cards during a November 9, 2017, breakfast held by the Volusia County (Florida) Chamber of Commerce. *Id.* at 2. The Complaint also states that Costello gave a speech on November 19, 2017, at the Flagler Trump Club in support of his candidacy. *Id.* at 2-3. Lastly, the Complaint alleges that on December 12, 2017, a representative of Costello's campaign named Vic Baker handed out business cards stating that Baker was Costello's campaign manager at a Volusia County (Florida) Republican Executive Committee meeting. *Id.* at 3, Ex. C.

² Am. Compl. at 3-4 (Jan. 19, 2018).

³ Costello states that he wrote a personal check on December 20, 2017, which took him past \$5,000 and, thereafter, required him to file a FEC Form 2, Statement of Candidacy. Fred Costello Resp. at 1 (Jan. 7, 2018). The

1 Respondents acknowledge that the required disclaimers may not have appeared on certain
2 campaign emails because features of some recipients’ email accounts blocked them, but they
3 also state that, to their knowledge, fewer than 500 emails without disclaimers may have been
4 received.⁵ Respondents further note that they have ensured that all future campaign emails
5 include embedded disclaimers, which should make it through to the recipients.⁶

6 Within fifteen days of becoming a candidate,⁷ the candidate must designate a principal
7 campaign committee by filing a Statement of Candidacy.⁸ The principal campaign committee
8 must then file a Statement of Organization no later than ten days after designation by the
9 candidate.⁹ Also, when a communication is paid for and authorized by a candidate or authorized
10 committee of a candidate, the disclaimer must clearly state that the communication has been paid
11 for by the authorized political committee.¹⁰ Commission regulations also require that a

Committee’s 2017 Year-End Report is consistent with Costello’s statement. FEC Form 3, *Reports of Receipts and Disbursements*, available at <http://docquery.fec.gov/pdf/715/201801269090656715/201801269090656715.pdf>.

⁴ Fred Costello Resp. at 1; *see also* FEC Form 2, Costello Statement of Candidacy (Dec. 27, 2017). Respondents also disagreed with Complainant’s characterization of events. Costello states that he only intended to run if Congressman DeSantis decided to run for Florida Governor, and that any statements that occurred before DeSantis’ decision not to run for reelection were conditional on DeSantis’ decision. Fred Costello Response at 1-2; Committee and Fred Costello Resp. at 1-3 (Jan. 26, 2018).

⁵ Fred Costello Supp. Resp. at 1 (Jan. 11, 2018); Committee and Fred Costello Resp. at 3.

⁶ *Id.*

⁷ 52 U.S.C. § 30101(2); 11 C.F.R. § 100.3.

⁸ 52 U.S.C. § 30102(e)(1); 11 C.F.R. § 101.1(a).

⁹ 52 U.S.C. § 30103(a); 11 C.F.R. § 102.1(a). *See* Factual and Legal Analysis at 2, MUR 7259 (Mark E. Harris).

¹⁰ 52 U.S.C. § 30120(a); 11 C.F.R. § 110.11(b)(1). The disclaimer must be presented in a clear and conspicuous manner, and, for printed communications, must be of sufficient type size to be clearly readable by the recipient, be contained in a printed box set apart from the other contents of the communication, and be printed with a reasonable degree of color contrast between the background and the printed statement. 52 U.S.C. § 30120(c); 11 C.F.R. § 110.11(c).

1 disclaimer appear on all public communications made by a political committee, including emails
2 of more than 500 substantially similar communications sent by a political committee.¹¹

3 There is no information in the record to suggest that Costello filed a Statement of
4 Candidacy designating a principal campaign committee more than 15 days after he became a
5 candidate under the Act. Therefore, the Commission finds no reason to believe that Frederick
6 “Fred” Costello or Fred Costello for Congress and Steve Tacinelli in his official capacity as
7 treasurer violated 52 U.S.C. § 30101(2).

8 Respondents state they intended to include disclaimers on the Committee’s emails, but
9 graphic blockers on the recipients’ email accounts removed them. Respondents note that they
10 have taken steps to prevent this problem in the future. In furtherance of the Commission’s
11 priorities relative to other matters pending on the Enforcement docket and the prompt remedial
12 actions, the Commission exercises its prosecutorial discretion and dismisses the allegations that
13 Frederick “Fred” Costello and Fred Costello for Congress and Steve Tacinelli in his official
14 capacity as treasurer violated 52 U.S.C. § 30120 and 11 C.F.R. § 110.11. *Heckler v. Chaney*,
15 470 U.S. 821, 831-32 (1985).

¹¹ 11 C.F.R. § 110.11(a). A public communication is a communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public political advertising. 11 C.F.R. § 100.26.